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**JAN 21 2010**

In re Application of :  
Thomas Ping Hua Lee : DECISION ON PETITION  
Application Number: 10/039578 :  
Filing Date: 04/22/2003 :  
Attorney Docket Number: 01-10- :  
1769 :

This is a decision on the petition, filed on October 2, 2009, under 37 CFR 1.183 which is treated as a petition seeking waiver of 37 CFR §§ 1.67 and 1.175 where they require that a supplemental declaration be executed by a named inventor.<sup>1</sup>

The petition is before the Office of Patent Legal Administration for decision.

The petition is **DISMISSED as moot**.

REVIEW OF FACTS

1. On October 26, 2001, the application papers were deposited as an application for reissue of U.S. Patent No. 5,971,751.
2. On August 19, 2002, a petition under 37 CFR 1.47(b) was filed.

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<sup>1</sup> Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

3. On April 22, 2003, a reissue application declaration by the assignee was filed, signed on behalf of the sole inventor, Thomas Ping Hua Lee by Felix Hon, President of assignee Calico Brands, Inc. The subject reissue application was accorded a filing date of April 22, 2003.

4. On May 22, 2003, the petition under 37 CFR 1.47(b) was granted.

5. On November 6, 2007, a non-final Office action was mailed, requiring a new reissue declaration because the reissue declaration in the application is defective in that it failed to identify the citizenship of the inventor.

6. On February 5, 2008, an amendment was filed, accompanied by a supplemental reissue declaration.

7. On October 2, 2009, the subject petition was filed, accompanied by a supplemental reissue declaration signed by Laurie Hon, Director, Calico Brands, Inc., Honson Marketing Group, Inc.

Petitioner asserts that the inventor cannot be reached.

DECISION ON PETITION UNDER 37 CFR 1.183  
TO WAIVE §§ 1.67 AND 1.175

At the outset, a petition under 37 CFR 1.47(b) was granted with respect to the sole inventor. Accordingly, as this application was previously accorded Rule 1.47(b) status, consideration of a request to accept a supplemental reissue declaration is properly considered under 37 CFR 1.183. Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires."

The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice. Since a petition under 37 CFR 1.47(b) was previously granted to permit the assignee to sign on behalf of the sole inventor, further relief under 37 CFR 1.47(b) or 1.183 is unnecessary. The assignee may sign a supplemental reissue declaration on behalf of the sole inventor throughout the prosecution. Accordingly, the petition is dismissed as moot.

Nevertheless, it is noted the declaration is not properly signed, and is thus improper. In this regard, petitioner has not shown that the person signing the Declaration on behalf of the assignee is authorized to do so. The Declaration must be signed on behalf of an officer of the corporation (president, vice president, secretary, treasurer, or chief executive officer) on behalf of and as agent for the non-signing inventors. The officer must identify his/her title in the Declaration. If the Declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted. See MPEP 409.03(b).

Petitioner must submit a properly-signed declaration, and/or proof of the authority of the person signing the declaration to sign on behalf of the assignee.

#### CONCLUSION

1. The petition is dismissed as moot.
2. Jurisdiction over the application is referred to Technology Center Art Unit 3749 for further processing.
3. Telephone inquiries related to this decision only should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.
4. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-9282.

/Kenneth M. Schor/

Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

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Kenpet7/